

Decision Notice



Decision 137/2008 Mr H and the Parole Board for Scotland

Relationship between Parole Board for Scotland and Executive Agencies

Reference No: 200800666

Decision Date: 22 October 2008

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr H requested from the Parole Board for Scotland (the Board) information about the extent of sharing of certain resources with the Scottish Government; means of appointment of Board members; details of the mechanism for convening Life Prisoner Tribunals; details of all members of the Board and details of any attempts to address perceived imbalances in the membership of the Board. The Board responded by providing some information and withholding other information, and by stating that it did not hold some of the information requested by Mr H. Following a review, Mr H remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner generally found that the Board had dealt with Mr H's request in line with Part 1 of FOISA. However, he also found that the Board took an overly restrictive view in interpreting certain parts of Mr H's requests.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) and (3) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held) and 21(4) (Review by Scottish Public Authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

R. (on the application of Brooke and others) v Parole Board and Another Court of Appeal (Civil Division) [2008] EWCA Civ 29; [2008] 3 All E.R. 289; [2008] H.R.L.R. 21 ('the Brooke case')

Background

1. On 28 February 2008, Mr H wrote to the Board requesting the following information:
 - a. Request 1 - The extent to which the Board shares its accommodation at Broomhouse Drive with executive agencies of the Scottish Government or other administrative units of the devolved Scottish administration, including bodies which appear nominally to be independent;



- b. Request 2 - The extent to which the Board shares communications networks provided under the auspices of the devolved Scottish administration, including telephone networks, switchboards, computer networks, servers, internal mail delivery systems, etc;
- c. Request 3 - The extent to which the Board has access to ancillary services provided under the auspices of the devolved Scottish administration, including legal services, human resource and payroll services, procurement services, etc;
- d. Request 4 - The means of appointment of Board members, including selection criteria, any advertisements for members published since 1 January 2007, the mechanism for appointing members (including membership of appointment panels) and details of any Ministerial or Departmental involvement in this process;
- e. Request 5 - Full details of the mechanism for convening Life Prisoner Tribunals, including any standing orders, directives or guidance as to the composition or conduct of such Tribunals such as may have been in force at any time between 1 January 2007 and 4 February 2008;
- f. Request 6 - Full details of all members of the Board as of 4 February 2008 to include dates of appointment, term of appointment, professional or other designation; and
- g. Request 7 - Full details of any attempts to address perceived imbalances in the membership of the Board by efforts to attract as members individuals from ethnic minorities, religious minorities, the lesbian gay and transgendered community, people with disabilities, victims of crime, etc .

2. The Board responded on 27 March 2008 as follows:

- Request 1 - Provided a list of bodies which share its accommodation;
- Request 2 – Confirmed the sharing of communication networks and listed the shared systems;
- Request 3 – Stated that the Board does not access the Scottish Government’s legal services, but has its own legal advisers, and that the Board uses the Government’s human resources and payroll services and takes advice from their procurement services;
- Request 4 – Provided details of the Government’s public appointments procedures and provided a hard copy from the information on the government’s website together with the address of the website in question. The Board advised Mr H that it is the Scottish Government, and not the Board, which is responsible for the public appointments process and that, as such, the Board does not hold documentation on the current round of advertised appointments other than the information contained in the advertisement for legal members (a copy of which was provided to Mr H);



- Request 5 – Listed the legislation applicable to Life Prisoner Tribunals, provided a copy of the section on such Tribunals from the Reference and Guidance Manual on procedure and practice, but withheld in terms of section 36(1) of FOISA legal advice in relation to the conduct of such tribunals;
 - Request 6 – Referred Mr H to the website that provided details of members of the Board and also provided a hard copy of this information; and
 - Request 7 – advised Mr H that it does not hold any information as to whether any attempts have been made to address perceived imbalances in the Board. The Board supplied excerpts from the Code of Practice that governs ministerial appointments to public bodies and a consultation paper from the Commissioner for Public Appointments in Scotland.
3. On 7 April 2008, Mr H wrote to the Board requesting a review of its decision on the basis that he was dissatisfied with the response to all of the requests (except the response to request 6). In particular, Mr H drew the Board's attention to:
- Request 1 – His wish for clarification of the answer given by the Board and whether the bodies were executive bodies of the devolved administration;
 - Request 2 – His expectation that he would have received an explanation of the extent of the sharing which would include details such as charging, payment and management arrangements;
 - Request 3 – His wish for confirmation that the Board does not have recourse to advice from the Constitution Unit of the Scottish Government;
 - Request 4 – His view that the response from the Board had not specified the mechanism of appointment of Board members and that several items in the request had not been addressed;
 - Request 5 – His view that insufficient information had been provided to him to satisfy this request. Mr H also questioned the Board's reliance on section 36(1) of FOISA; and
 - Request 7 - His view that insufficient information had been provided to him to satisfy the request, on the basis that he expected monitoring to be in place.
4. The Board notified Mr H of the outcome of its review on 24 April 2008. On review, the Board:
- Request 1 – Upheld the initial response, but provided the names of other bodies which also share the Broomhouse Drive accommodation which had been omitted from the original response from the Board;



- Request 2 – Upheld the initial response since it was not reasonably foreseeable for the Board to know that Mr H anticipated detail as to practical arrangements. The review said that these details would be treated as a new request to which the Board would respond;
 - Request 3 – Upheld the initial response on the basis that Mr H, in his review, was seeking different information from that in his initial request. The review said that this would be treated as a new request to which the Board would respond;
 - Request 4 – Upheld the initial response. In respect of the information requested about panel membership in relation to recent selection meetings (in particular any Ministerial membership and copies of recent advertisements), the review confirmed that, in terms of section 17 of FOISA, the Board does not hold any information except the copy advertisement (which had been supplied) and two notes of legal advice written by a legally qualified member of the Board. The review upheld the initial response to withhold this legal advice in terms of section 36(1) and added that it was also of the view that this advice was exempt under a further four exemptions in FOISA. The review explained that information supplied to Mr H had been downloaded from the Scottish Government's website and that of the Commissioner for Public Appointments and, as such, in terms of section 17, was not held by the Board. This information was provided to assist Mr H. Certain parts of the request for review in Mr H's letter seeking a review were also treated by the Board as new requests;
 - Request 5 – Upheld the initial response and named a further piece of legislation, which fell outwith the scope of this request, but which was apparently provided to assist Mr H. The review stated that, in terms of section 17, further information was not held by the Board. The review upheld the initial response to withhold legal advice in terms of section 36(1) and added that it was also of the view that this advice was exempt under section 38(1)(b) of FOISA; and
 - Request 7 - Upheld the initial response. The Board explained that the information supplied to Mr H had been downloaded from the Government's website and that of the Commissioner for Public Appointments and as such, in terms of section 17, was not held by the Board. The information was provided to assist Mr H.
5. On 30 April 2008, Mr H wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr H had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.



Investigation

7. On 8 May 2008, the Board was notified in writing that an application had been received from Mr H and was asked to provide the Commissioner with any information withheld from Mr H. The Board responded and the case was allocated to an investigating officer.
8. The investigating officer subsequently contacted the Board on 24 June 2008, providing it with an opportunity to comment on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions.
9. The Board responded on 15 July 2008 with its submissions.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all the information and submissions presented by Mr H and the Board and is satisfied that no matter of relevance has been overlooked.
11. Much of Mr H's application to the Commissioner relates to whether the Board correctly interpreted his information requests. Mr H questioned whether the Board had provided him with sufficient information to satisfy his requests, particularly given that he had indicated the material he was seeking by prefacing his information requests with reference to a decision by the Court of Appeal, *R. (Brooke and Another) v Parole Board and Another* (the Brooke case). The Brooke case, Mr H argued, should therefore inform the response given by the Board.
12. In the Brooke case, the Secretary of State appealed against a decision of the Divisional Court that the Parole Board for England and Wales did not meet the requirements of the common law and of article 5(4) of the European Convention on Human Rights. The Divisional Court had found that the relationship between the Parole Board for England and Wales and its sponsoring department, the Ministry of Justice, placed the Secretary of State in a position of apparent influence over the approach of the Parole Board for England and Wales to its curial duties. The Appeal Court dismissed the appeal and found the Divisional Court's findings of lack of independence, both actual and apparent, were justified and supported by the evidence.
13. The Parole Board for Scotland is a Non-departmental Public Body, the members of which are appointed by the Scottish Ministers and who direct the Scottish Ministers on matters relating to the release of prisoners on licence. In his letter of 28 February to the Board, Mr H stated that he was minded to seek a judicial review of a recent decision by the Life Sentence Tribunal of the Board in which, according to Mr H, the relationship between the Board and the Scottish Government may become a live issue as a result of the Brooke case.



14. The Board advised the Commissioner that, despite Mr H stating the context in which he was requesting information, it did not take, and should not have taken, account of the motivation in determining whether the information was subject to any exemption. Additionally, the Board submitted that it was not required to use the context of requests as an interpretative tool for those requests.
15. However, the Commissioner considers that it will, in certain cases, be entirely appropriate for a public authority to take account of the stated context in which an information request is made in order to help assist with interpreting the request, particularly where it is not entirely clear from the wording of the request the information which is being sought.
16. Section 8(1) of FOISA makes it clear that any information request must describe the information requested. However, FOISA does not state what is required in order that the request can be said to describe the information requested.
17. As the Board has recognised, a request should be read objectively. While public authorities are not expected to go behind the phrasing of the request, it is unreasonable always to expect an applicant to have detailed knowledge of what information is held by a Scottish public authority, or to describe such information with precision. There is a balance to be struck between what it is reasonable to expect of a public authority in interpreting a request and what it is reasonable to expect of an applicant in framing a request.
18. To address this balance, any information request should be approached in a common sense way and with the intention of assessing what information it is that the person making the request wishes. If that is not clear, then the public authority receiving the request may have an obligation under section 15(1) of FOISA to advise and assist the person making the request and this may lead to the request being clarified. Section 1(3) FOISA provides for a situation where the request is not clear and further information is sought in order to comply with the request for information.
19. With these thoughts in mind, the Commissioner will consider the way in which the Board dealt with Mr H's requests.

Request 1

20. Mr H's application to the Commissioner questioned whether the Board had provided sufficient detail in its response and listed the type of documents which he expected the Board to hold. He also questioned whether it was necessary for the Board to take elements of his review as new information requests.
21. Mr H's first request was for the extent to which the Board shares its accommodation at Broomhouse Drive with executive agencies of the Scottish Executive (Scottish Government), or other administrative units of the devolved Scottish Administration, including "bodies which appear nominally to be independent."



22. In response, the Board provided a list of bodies which shared its accommodation. Mr H then questioned whether all the bodies listed by the Board in its initial response were agencies of the Scottish Government, sought clarification about the meaning of “Scottish Government Core” and asked whether two other named Scottish public authorities also shared the premises. Finally, Mr H invited comment on what is involved in terms of tenure by sharing of the accommodation.
23. The Board in its review confirmed that the two Scottish public authorities named by Mr H did share the premises, and provided details of another two public bodies that also shared the premises.
24. Mr H’s application to the Commissioner submits that the Board did not provide him with complete information as to the agencies with which it shares its accommodation. He said that he would expect this kind of information to be held as details of leasing arrangements, or the like, and that his initial request was sufficiently wide to cover these possibilities. He also said that by prefacing his request with reference to the Brooke case he was alerting the authority to the fact that he wished information about any inter-relationship with public bodies.
25. The Board submitted that it has provided Mr H with a list of bodies with which it shares premises (since the information request related to ‘accommodation sharing’) and that information on the status of these bodies is outwith the initial request, and in any case is not held by the Board.
26. Whilst the Board did not initially provide Mr H with the identity of all the bodies sharing its accommodation, it did so at review. It also provided Mr H with information which did not fall within his request, and which Mr H drew the Board’s attention to, i.e. bodies which are not Scottish public authorities, but which share the premises.
27. In Mr H’s review he asks the status of the bodies sharing the accommodation, but this is done in the context of his initial request which was for “executive agencies of the Scottish Executive (Scottish Government), or other administrative units of the devolved Scottish Administration” and the fact that the Board included public bodies which were UK government bodies. Mr H states in his review request that the Board “have regard to the actual terms” of his request: his intent seems to be to categorise which of the bodies named by the Board are of the Scottish Government rather than the UK Government.
28. In this respect, the Commissioner notes that the Board has now provided Mr H with all the information which falls within his request. The Commissioner also notes that strictly speaking the information provided by the Board may not have been held by it in terms of FOISA.
29. The issue of the status of the bodies seems to arise because the Board provided more information than was sought in the initial request. To address whether the Board had provided more information than was necessary involved giving consideration of the status of the public bodies listed and this would logically require providing information about the status of bodies previously listed. Whilst to provide an answer on the status of each body may not have required much effort by the Board, the Commissioner accepts that to do so was not required by FOISA. The status of the body was relevant in composing the response to Mr H.



30. However, aside from the status of the bodies, the Commissioner accepts that the review request of Mr H, introduces into the initial request a detail – that of tenure - which it is not reasonable to expect the Board to interpret in the initial request.
31. The Commissioner notes that the Board has now replied and conducted a review in respect to this new request in respect of tenure.

Request 2

32. Similarly, Mr H's application to the Commissioner questioned whether the Board had provided sufficient detail in its response to his second request: Mr H listed the type of documents that he expected the Board to hold and also questioned whether it was necessary for the Board to take elements of his review as new information requests.
33. Mr H's second request was:

“To what extent the Board shares communications networks provided under the auspices of the devolved Scottish administration, including telephone networks, switchboards, &c computer networks, servers, &c internal mail delivery systems, &c.”
34. As a reply the Board confirmed the sharing of communication networks and listed the shared systems: telephone networks, switchboards, computer networks, server and internal mail delivery systems.
35. Mr H said in his review, and in his application to the Commissioner, that his expectation was that he would receive an explanation which would include the practical extent of the shared system. In response the Board said that it was not reasonable to anticipate that this level of detail was sought and it was treating the request for review as a separate, new request
36. Again the Commissioner must consider what it is reasonable to expect of a public authority in dealing with an information request. The initial reply by the Board simply confirms that it shares the equipment listed by Mr H, but does not address the extent, nor give an indication of the information held.
37. Whilst the Commissioner accepts the Board's submission that Mr H does introduce a new request in his review, the Commissioner is also of the view that the Board did not respond fully to Mr H's request. Whilst it may not be reasonably foreseeable for the Board to know that Mr H anticipated detail as to practical arrangements, it would be reasonably foreseeable that Mr H was expecting a reply on the extent of any sharing. The wording of the request ('to what extent') suggests this and the Board's response seems a re-iteration of the request. The Commissioner would have expected more detail in the response of the Board to the initial second request if this information were held, or if the information were not held, the citing of section 17 (as the Board later did).



38. The Commissioner accepts the Board's submission that it does not hold this information and notes that the Board has now responded (28 April and 11 June 2008) to Mr H in respect of his review which the Board interpreted as a new request. The Commissioner notes that this response (of 28 June 2008) is fuller, and cites section 17 of FOISA.

Request 3

39. Mr H's application to the Commissioner questioned whether the Board was correct to interpret an element of his review of his third request as new information requests.
40. Mr H's third request was:
- "To what extent the Board has access to ancillary services provided under the auspices of the devolved Scottish administration, including legal services, human resource and payroll services, procurement services, &c."
41. The Board replied that it does not access the Scottish Government's legal services, but has its own independent legal advisers. The Board stated that it uses the Scottish Government's human resources and payroll services and takes advice from the Scottish Government's procurement services.
42. On review, Mr H asked for confirmation that the Board does not have recourse to advice from the "Constitution Unit" of the Scottish Government (presumably the Constitutional and Parliamentary Secretariat of the Directorate for Constitution, Law and Courts) and the Board interpreted this as a separate request.
43. Mr H's application to the Commissioner stated that the initial request referred to legal services of which the Scottish Constitution Unit was merely one example.
44. The initial request is for the extent of access to 'ancillary services' (to include legal services) provided by the Scottish Government. The Board's reply was that it does not have access to such legal services, but had its own legal advisers. It also explained that it does use the Scottish Government's human resources and payroll services. The Board provided a complete answer to Mr H's request, but Mr H sought confirmation that the Board does not have access to advice from the Constitution Unit of the Scottish Government. Whilst this could be interpreted as a new request, it could also be seen as an attempt to confirm an aspect that had been answered. The Commissioner does not feel that it is entirely useful, in this instance, to treat this aspect of the review as new request. However, the Commissioner acknowledges that by doing so Mr H would have had the right to seek a review of the Board's response should he be dissatisfied, which he would not have been able to do had the Board simply confirmed what Mr H asked.
45. The Commissioner notes that the Board has now replied both as an initial request and as a review response to the part of the review which it interpreted as a new request in respect of the Constitution Unit.

Request 4



46. Mr H's application to the Commissioner questioned whether the Board had provided sufficient detail in its response. In particular, he stated that information provided by the Board indicated that the Chairman participates in the appointment procedure. However, Mr H wished more detail about what was involved and believed such information must be held by the Board. Again, Mr H questioned whether it was necessary for the Board to take elements of his review as new information requests.
47. Mr H's fourth request was:
- "Please advise as to the means of appointment of Board members, to include details of selection criteria, any advertisements published since 1 January 2007, the mechanism for appointing members (to include membership of appointment panels, &c) and details of any Ministerial or Departmental involvement in this process."
48. The Board said that it did not hold the information, but, in order to assist Mr H, provided details of the Government's public appointments procedures from the Scottish Government's website:
- <http://www.scotland.gov.uk/topics/government/public-bodies/public-appointments>
49. The Board explained the Scottish Government was responsible for the public appointments process and the Board held no information about the current round of advertised appointments other than the advertisement for legal members of the Board which it supplied to Mr H.
50. On review, Mr H raised a number of points about information which had not been provided by the Board, all of which related to the Board having not specified the mechanism of appointment of Board members. In particular, Mr H noted that the Board had not specified information as to committee, panel or Ministerial membership in relation to selection meetings. In his application Mr H argued that it was inconceivable that the Board held no information about the selection procedure of its members.
51. The Board responded to the review and stated that, in terms of section 17 of FOISA, it did not hold the information requested, that is:
- Information about panel membership in relation to recent selection meetings;
 - Any Ministerial and committee membership of such meetings
52. The Board did however state that it held notes of legal advice which it believed fell within Mr H's request and that these notes were exempt from disclosure under FOISA, including under section 36(1).
53. Mr H submitted in his application to the Commissioner that it was in the public interest that the workings of the Board be transparent and that access to legal advice received by it would enable this transparency. Mr H said that he was of the view that legal advice provided to the Board by a member did not fall within the terms of section 36 Mr H also stated that the request could be fulfilled by redaction of any personal data.



54. During the investigation, the Board reconsidered its position on the legal advice and decided that it fell outwith the terms of Mr H's request. Given that the legal advice related to specific cases before the Board and did not have any relevance to the Brooke case, the Commissioner agrees that the legal advice does not fall within the terms of Mr H's request. Accordingly, this legal advice will not be considered further in relation to this specific request.
55. The information supplied by the Board from the government website was, the Board stated, strictly not held by it but was supplied in the spirit of assistance. That information included general information about public appointments, which would relate to those appointments to the Board.
56. The Commissioner accepts that the Board has supplied all the information which it holds which falls within the terms of this request and was correct to cite section 17 for the remaining information.
57. The Board also stated that aspects of Mr H's request for review introduced a new request in that he did not initially request information about whether the Board is required to reserve a number of places for judicial, legal and lay members. The Board treated this as a new request to which it provided information (on 28 April 2008).
58. Again it is arguable whether the response provided by the Board (on 28 April 2008), and which provides more detail about appointment, could have been provided to Mr H in response to his initial request or at review. It is noted that this response overlaps to a degree with information provided at an earlier stage, i.e. the legislation cited in response to request 5. However, in this instance, the Commissioner is satisfied that the Board has provided all the information which falls within the terms of this request.
59. In considering his fourth request, Mr H specifically asked the Commissioner to determine whether the Board could found on exemptions at review which it did not cite in response to the initial request.
60. The Commissioner notes that section 21(4) of FOISA sets out the various options open to a public authority at review. The authority may:
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
61. As can be seen from the variety of options provided for in section 21(4), the Commissioner is satisfied that it is possible for a public authority to found on an exemption at review stage which it did not originally cite when responding to the initial request.

Request 5

62. Mr H's fifth request was for:



“Full details of the mechanism for convening individual Life Prisoner Tribunals, including any standing orders, directives or guidance as to the composition or conduct of such Tribunals such as may have been in force at any time between 1 January 2007 and 4 February 2008.”

63. The Board’s response listed the legislation applicable to Life Prisoner Tribunals and, on review, the Board provided a copy of the section on Life Prisoner Tribunals from its Reference and Guidance Manual on Procedure and Practice. In terms of section 36(1) of FOISA, the Board withheld legal advice in relation to the conduct of such tribunals for specific cases.
64. Mr H said that insufficient information had been provided to him to satisfy his request and he questioned reliance on section 36(1) of FOISA. The Board advised the Commissioner that it was of the view that the legal advice did not fall within the scope of the request, but for clarification - and in seeking to be open and transparent - the Board had applied the exemption in section 36(1) of FOISA to this information.
65. The Commissioner does not consider that the legal advice falls within the terms of Mr H’s request, which was for legislation or guidance “in force” within the specified period. Although legal advice may in certain circumstances be referred to or described as ‘guidance’, the wording of the request suggests that Mr H is seeking guidance which is legislative or created by the Board or another body. The Commissioner therefore considers that the legal advice does not fall within the terms of the request.
66. Having accepted that the legal advice does not fall within the terms of the request, the Commissioner will not consider whether this legal advice is exempt under FOISA.
67. Mr H’s initial request seeks full details of the mechanism for convening individual Life Prisoner Tribunals.
68. The Commissioner accepts that the information supplied, i.e. a list of the statutes, falls within the request. He also agrees with the Board that to respond to Mr H’s review would require it to create new information that is *identification of the particular aspects* of the provisions referred to upon which the Board places reliance in discharging its functions as a Tribunal determining the European Convention on Human Rights Article 5 rights of discretionary life sentence prisoners.
69. The Commissioner is of the view that the Board was correct to consider this as a new request. Whilst the Board could have chosen to respond to these points on review, this part of the review asks the Board which parts of the information given (‘of the particular aspects of the provisions referred to’) fulfils a certain function and is distinct from the initial request.
70. Mr H is, of course, entitled to seek review of those parts of his review request which were treated by the Board as initial request if he is dissatisfied with the response, and apply to the Commissioner’s office if he is dissatisfied.

Request 7

71. Mr H’s seventh request was for:



“Full details of any attempts to address perceived imbalances in the membership of the Board by efforts to attract as members individuals from ethnic minorities, religious minorities, the Lesbian Gay and Transgendered (LGT) community, people with disabilities, victims of crime, etc.”

72. The Board responded that it does not hold any information as to whether any attempts have been made to address perceived imbalances. The Board supplied excerpts from the Code of Practice governing ministerial appointments to public bodies and a consultation paper of the Commissioner for Public Appointments in Scotland, which had been downloaded from the government’s website and that of the Commissioner for Public Appointments. In terms of section 17, the Board stated that this was not held, but was provided to assist Mr H.
73. The Board submitted that were this information to be held, it would be held by the body responsible for selecting board members, i.e. the Scottish Ministers, and not the Board itself. The Board explained the information which had been searched to see if any information fell within the scope of request 7. No information was held since the information held related to post-appointment rather than pre-appointment. Accordingly, Mr H would be better advised, the Board said, requesting this information from the Scottish Ministers.
74. The Commissioner accepts the Board’s submission that, in terms of section 17 of FOISA, it does not hold information that falls within the terms of Mr H’s seventh request.
75. Mr H suggested that the Commissioner may wish to explore with the Board the extent to which any such initiative as may have been sponsored by the Scottish Executive or the UK Government may have been acted upon within the Board. Such action is not within the remit of the Commissioner.

DECISION

The Commissioner finds that the Parole Board for Scotland (the Board) generally acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr H.

While the Board generally gave a reasonable interpretation to Mr H’s requests (and, indeed, provided Mr H with information which fell outwith the terms of his actual requests in order to assist him), the Commissioner finds that the Board took an overly restrictive view of a small number of parts of Mr H’s requests. In doing so, the Board failed to comply with Part 1 of FOISA and, in particular, section 1(1).

However, given that the Board subsequently dealt with these requests, he does not require the Board to take any action in this respect.



Appeal

Should either Mr H or the Parole Board for Scotland (the Board) wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
22 October 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),



if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.